Calendar No. 762

99TH CONGRESS
2d Session

SENATE

REPORT
99-360

PROVIDING CERTAIN AUTHORITY TO REDUCE EROSION WITHIN THE CUYAHOGA VALLEY NATIONAL RECREATION AREA, AND FOR OTHER PURPOSES

AUGUST 1 (legislative day, JULY 28), 1986.—Ordered to be printed

---

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 934]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 934) to provide certain authority to reduce erosion within the Cuyahoga Valley National Recreation Area, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the Act do pass.

PURPOSE OF THE MEASURE

H.R. 934, as reported, would provide authority to the Secretary of the Interior to undertake erosion control work and to correct public health and safety hazards on all lands within the boundary of the Cuyahoga Valley National Recreation Area, Ohio.

BACKGROUND AND NEED

The Cuyahoga Valley National Recreation Area has 32,460 acres within its boundaries; of which 14,725 are federally owned, about 8,727 are private lands and the remainder are owned by non-Federal public agencies.

The problem this legislation attempts to solve is the heavy sediment that is deposited by the Cuyahoga River in the Cleveland Harbor each year. The U.S. Corps of Engineers spends $4 million annually to remove the shoals created by the sediment. Studies have linked the lands within the Cuyahoga Valley National Recreation Area as a major source of the sedimentation.

71-010

S313-22

H.R. 934 directs the Secretary of the Interior to enter into cooperative arrangements with the Secretary of Agriculture, the State of Ohio, and affected local governments to substantially eliminate soil erosion on both publicly and privately owned lands within the boundaries of the recreation area. The Act requires that any work done on privately owned lands must be done with the consent of the owner, and it further directs the Secretary of the Interior to correct areas of ecological degradation which would create hazards to health and safety. H.R. 934 authorizes $4.75 million, through fiscal year 1989, to accomplish its purposes.

Legislative History

H.R. 934 was introduced by Representative Seiberling on February 4, 1985. The measure was passed by the House of Representatives on May 13, 1985. On February 21, 1986, the Subcommittee on Public Lands, Reserved Water and Resource Conservation held a hearing on H.R. 934.

At a business meeting on July 16, 1986, the Senate Committee on Energy and Natural Resources ordered H.R. 934 favorably reported.

Committee Recommendations and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on July 16, 1986 by unanimous vote of a quorum present recommends that the Senate pass H.R. 934.

The rollcall vote on reporting the measure was 17 yeas, 0 nays as follows:

YEAS	NAYS
Mr. McClure	
Mr. Hatfield*	
Mr. Weicker	
Mr. Domenici	
Mr. Wallop	
Mr. Warner	
Mr. Murkowski*	
Mr. Nickles	
Mr. Hecht	
Mr. Evans*	
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Metzenbaum*	
Mr. Bradley*	
Mr. Bingaman*	
Mr. Rockefeller*	

* Indicates vote by proxy.

Cost and Budgetary Considerations

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 23, 1986.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 934, an act to provide certain authority to reduce erosion within the Cuyahoga Valley National Recreation Area, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER.

CONGRESSIONAL BUDGET OFFICE, COST ESTIMATE

1. Bill number: H.R. 934.

2. Bill title: An act to provide certain authority to reduce erosion within the Cuyahoga Valley National Recreation Area, and for other purposes.

3. Bill status: As ordered reported by the Senate Committee on Energy and Natural Resources, July 16, 1986.

4. Bill purpose: H.R. 934 would direct the Secretary of the Interior to undertake an erosion-control program in the Cuyahoga Valley National Recreation Area. In addition, the Secretary would be directed to correct certain areas of ecological degradation such as dump sites and uncapped oil and gas wells. The Secretary would be authorized to correct erosion on privately owned lands under this program only with the owner's consent and with the assurance that the improvements will be maintained for at least 10 years. The act would authorize appropriations for these purposes of $500,000 in fiscal year 1986, $1 million in fiscal year 1987, $1.5 million in fiscal year 1988, and $1.75 million in fiscal year 1989.

5. Estimated cost to the Federal Government: The direct impact of H.R. 934 on the federal budget is as follows:

[By fiscal years, in millions of dollars]

	1987	1988	1989	1990	1991
Authorization level	1.5	1.5	1.8		
Estimated outlays	1.3	1.4	1.8	0.3	

Potential savings to the federal government are likely to result from reduced dredging requirements in the Cleveland Harbor if Cuyahoga Valley erosion is reduced; however, the exact magnitude of the savings is uncertain. It is possible that the Army Corps of Engineers' annual dredging bill of about $4 million eventually could be cut by 30–50 percent if erosion control actions are sucessful, but these savings may not become evident for several years.

The costs of this bill fall within budget function 300.

Basis of estimate: Because this estimate assumes that H.R. 934 will be enacted around October 1, 1986, it is assumed that the funds authorized for fiscal year 1986 will not be appropriated for that year, and will instead be appropriated for fiscal year 1987 (as provided in the act). All sums authorized for other years are assumed to be appropriated prior to the beginning of each fiscal year.

Outlays have been estimated on the basis of information obtained from the Department of the Interior. If the Secretary is unable to obtain permission to include certain privately owned sites in the Cuyahoga Valley erosion control project, outlays may be less. Currently, six privately owned sites have been identified by the Department of the Interior as candidates for the program. These sites would cost approximately $1 million to correct. If permission to do so cannot be obtained, federal outlays will be reduced by that amount.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: On May 7, 1985, the Congressional Budget Office prepared a cost estimate for H.R. 934, as ordered reported by the House Committee on Interior and Insular Affairs. This estimate of the Senate version differs only in that the assumed enactment date is much later, and therefore no appropriations are assumed for fiscal year 1986.

9. Estimate prepared by: Dave Smith and Deb Reis.

10. Estimate approved by C.G. Nuckols for James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 934. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 934, as reported.

Executive Communications

The pertinent legislative report received by the Committee from the Department of the Interior setting forth executive agency recommendations relating to H.R. 934 is set forth below:

U.S. Department of the Interior,
Office of the Secretary,
Washington, DC, September 5, 1985.

Hon. James A. McClure,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: This responds to your request for our views on H.R. 934, an act, "To provide certain authority to reduce erosion

within the Cuyahoga Valley National Recreation Area, and for other purposes."

We believe this legislation is unnecessary and, therefore, we oppose enactment of H.R. 934 for several reasons.

H.R. 934 is identical to a measure, H.R. 3739, passed by the House during the 98th Congress. This act would authorize and direct the Secretary of the Interior to enter into cooperative arrangements with the Secretary of Agriculture, the State of Ohio, and affected local governments to substantially eliminate soil erosion on both publicly and privately owned lands within the boundaries of Cuyahoga Valley National Recreation Area, Ohio. The act would require that any work done on privately owned land must be done with the consent of the owner, and it further would direct the Secretary of the Interior to correct areas of ecological degradation which create hazards to health and safety. Finally, H.R. 934 would authorize $4.75 million, through fiscal year 1989, to accomplish its purposes.

The problem that this legislation attempts to solve is the heavy sediment that is deposited in the Cleveland harbor each year. This requires the U.S. Army Corps of Engineers to spend $4 million annually to remove the shoals created by the sediment.

In evaluating this proposed legislation, we have reviewed it in light of the following questions: "What portion of the problem is attributable to soil erosion from sites within the recreation area boundaries?" and "Is existing authority sufficient to reduce erosion on those sites within the boundaries of the recreation area?"

With regard to our first question, as we testified during the last Congress, we were concerned with the conclusions of the Corps of Engineers' study. Therefore, the National Park Service requested that a multidisciplinary review team be assembled to evaluate existing reports, to visit the national recreation area, and to prepare a report to be transmitted through the U.S. Forest Service to the National Park Service. The evaluation has been prepared in draft, and we will be receiving the final report shortly. At that time, we plan to share our results with the Corps of Engineers, and, subsequently, we would also be pleased to share the results with your Committee.

With regard to the second question, the national recreation area staff has already taken steps to reclaim obviously eroding sites within the boundaries. To date, the recreation area staff has identified 34 sites encompassing about 625 acres of land, both publicly and privately owned, that need extensive reclamation work.

With $250,000 added to the fiscal year 1983 appropriations for the purpose of site reclamation, the recreation area staff has work underway at seven sites and has contracted for reclamation plans at two other sites.

There are ten other sites within the recreation area that are badly eroding, and currently all ten of these sites are in non-federal ownership. Pursuant to the recreation area's Land Protection Plan, approved on October 22, 1984, only four of the ten sites have been identified for acquisition. The six sites to remain in private or non-federal public ownership will have to be reclaimed through another mechanism. Therefore, what we propose to do is use existing authority to enter into an interagency agreement with the Depart-

ment of Agriculture to work with private landowners to reclaim the eroding sites.

Another element of H.R. 934 applies to the many uncapped oil and gas wells throughout the recreation area. Specifically, the bill states that the Secretary shall "correct areas of ecological degradation which create hazards to health and safety." State regulations require that these open wells be capped; and, in fact, the recreation area staff is in the process of contracting to have some of these wells brought into compliance.

Therefore, we are already addressing, under existing authorities, erosion within the boundaries of the recreation area. We believe reclamation of those sites within the recreation area will aid in relieving, somewhat, the Cleveland harbor problem. We will solve those problems that are and can be attributable to processes that do not occur naturally within the recreation area; however, there are problems within the watershed outside of the national recreation area which this legislation will not solve.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

WILLIAM P. HORN,
Assistant Secretary.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Act H.R. 934 as ordered reported are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF DECEMBER 27, 1974

(88 Stat. 1785, as amended, 16 U.S.C. 460ff-3)

* * * * * * *

SEC. 4. (a) The Secretary shall administer the recreation area in accordance with the provisions of sections 1 and 2 of this title, as amended and supplemented. In the administration of the recreation area, the Secretary may utilize such statutory authority available to him for the conservation and management of wildlife and natural resources as he deems appropriate to carry out the purposes of sections 460ff to 460ff-5 of this title.

(b) The Secretary may enter into cooperative agreements with the State of Ohio, or any political subdivision thereof, for the rendering, on a reimbursable basis, of rescue, firefighting, and law enforcement services and cooperative assistance by nearby law enforcement and fire preventive agencies.

(c)*(1)* The authority of the Secretary of the Army to undertake or contribute to water resource development, including erosion control and flood control, on land or waters within the recreation area shall be exercised in accordance with plans which are mutually acceptable to the Secretary of the Interior and the Secretary of the

Army and which are consistent with both the purposes of sections 460ff to 460ff-5 of this title and the purposes of existing statutes dealing with water and related land resource development.

(2) The Secretary is authorized and directed, in cooperation with the Secretary of Agriculture, the State of Ohio, and affected local governments, to undertake a program of land treatment for the purpose of restoring suitable vegetative cover to substantially eliminate erosion from all lands, public and private, within the athorized boundaries of the recreation area. In the case of any private lands, within such authorized boundaries such treatment may be undertaken only with the consent of the owner thereof and shall be contingent upon assurances that such land treatment will be maintained by the owner for a period of not less than ten years. The Secretary shall, in conjunction with such program, take such actions as may be required to correct areas of ecological degradation which create hazards to health and safety.

(d) The Secretary, in consultation with the Governor of the State of Ohio, shall inventory and evaluate all sites and structures within the recreation area having present and potential historical, cultural, or architectural significance and shall provide for appropriate programs for the preservation, restoration, interpretation, and utilization of them.

(e) Notwithstanding any other provision of law, the Secretary is authorized to accept donations of funds, property, or services from individuals foundations, corporations, or public entities for the purpose of providing services and facilities which he deems consistent with the purposes of sections 460ff to 460ff-5 of this title.

(f) The Secretary may, on his own initiative, of at the request or any local government (or intergovernmental organization) having jurisdiction over land located within or adjacent to the recreation area, assist and consult with the appropriate officers and employees of such local government (or intergovernmental organization) in establishing zoning laws or ordinances which will assist in achieving the purposes of sections 460ff to 460ff-5 of this title. In providing assistance pursuant to this subsection, the Secretary shall endeavor to obtain provisions in such zoning laws or ordinances which—

(1) have the effect of prohibiting the commercial and industrial use (other than a use for commercial farms and orchards) of all real property adjacent to the recreation area;

(2) aid in preserving the character of the recreation area by appropriate restrictions on the use of real property in the vicinity including, but not limited to, restrictions upon: building and construction of all types; signs and billboards; the burning of cover; cutting of timber (except tracts, managed for sustained yield); removal of topsoil, sand, or gravel; dumping, storage, or piling of refuse; or any other use which would detract from the aesthetic character of the recreation area; and

(3) have the effect of providing that the Secretary shall receive notice of any hearing for the purpose of granting a variance and any variance granted under, and of any exception made to the application of such law or ordinance.

Assistance under this subsection may include payments for technical aid.

* * * * * * *

SEC. 6. (a) There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of section 460ff to 460ff–5 of this title, but not more than $70,100,000 for the acquisition of lands and interests in lands.

(b) For the development of the recreation area, including improvements of properties acquired for purposes of section 460ff to 460ff–5 of this title, there is authorized to be appropriated not more than $13,000,000. Within one year from the date of establishment of the recreation area pursuant to sections 460ff to 460ff–5 of this title, the Secretary shall, after consulting with the Governor of the State of Ohio, develop and transmit to the Committees on Interior and Insular Affairs of the United States Congress a final master plan for the development of the recreation area consistent with the objectives of sections 460ff to 460ff–5 to this title, indicating:

(1) the facilities needed to accommodate the health, safety, and recereation needs of the visiting public;

(2) the location and estimated cost of all facilities; and

(3) the projected need for any additional facilities within the area.

(c) There are hereby authorized to be appropriated not more than $500,000 for fiscal year 1986, $1,000,000 for fiscal year 1987, $1,500,000 for fiscal year 1988, and $1,750,000 for fiscal year 1989, to carry out the provisions of section 4(c)(2) of this Act. Any amounts authorized to be appropriated for any fiscal year under this subsection which are not appropriated for that fiscal year shall remain available for appropriation in succeeding fiscal years.

○